



U.S. Department of Justice

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US EPA RECORDS CENTER REGION 5



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November 8, 1984

Mr. Frederick F. Stiehl  
Associate Enforcement Counsel for Waste  
Office of Enforcement & Compliance  
Monitoring (LE-134S)  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Re: United States v. Reilly Tar & Chemical Corp.  
No. 4-80-469 (D. Minn.)

Dear Fred:

I am writing you to express my concerns about the pace of the Superfund RIFS process at the Reilly Tar site in St. Louis Park, Minnesota and its impact on the litigation. As you know, trial is expected to begin April 30, 1985. The Superfund program had planned to complete the Record of Decision on the remaining portions of the remedy by February 1985 and has set aside money in the SCAP to implement that remedy in the spring. However, the feasibility study which must precede the ROD has not gotten underway.

As I understand the situation, the Reilly site is a State-lead site and thus money for the feasibility study is provided by EPA through a cooperative agreement to the State of Minnesota, which in turn hires a contractor. State law requires that the contractor be selected through competitive bidding. I understand that the State has not begun the contracting process and that the competitive bidding process will take three months before it is completed and the contractor is hired.

Thus, if things are left as they are, the feasibility study would not be complete before trial. Recently, Judge Magnuson has expressed great concern over what he perceives to be governmental delay in implementing a remedy at the site. The United States cannot expect to be fully prepared to try this case in April if the feasibility study and the ROD are not completed and the United States is not ready to implement

a remedy, particularly since the defendant will claim that it is prepared to implement its inadequate version of a remedy.

The solution to the problem is to get the feasibility study underway as quickly as possible. Because much work has already been done to study the remedy, the actual time needed to perform the feasibility study may be as short as or shorter than the needed three months to get a firm under contract under Minnesota law. One possible solution is for EPA to use one of its zone contractors to perform the work, rather than have the State hire a contractor to perform the work. I understand that the State may be willing to allow EPA to complete that portion of the feasibility study dealing with the upper aquifers (the drift, Platteville and St. Peter aquifers), but strongly wishes to maintain the lead on that portion of the feasibility study which deals with the principal contaminated aquifer, the Prairie du Chien-Jordan, because of the strong public concern over where to discharge contaminated water pumped from that aquifer. I also understand that there may be a problem if the State returned to EPA the funds set aside under the cooperative agreement for the feasibility study, because those funds may have to be returned to the Treasury and not to the Superfund.

Unfortunately, the litigation team did not identify this problem earlier for management consideration. I have reminded my staff of the need for quick evaluation and resolution of these types of problems. Obviously, the anticipated delay in completing the feasibility study is a serious problem that may have a negative impact on our success at trial or in settlement negotiations if it cannot be resolved. Will you let me know as soon as possible what can be done to break this logjam and get the feasibility study underway quickly.

Sincerely yours,

F. Henry Habicht II  
Assistant Attorney General  
Land and Natural Resources Division

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